**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL WRIT PETITION NO.1350 OF 2005**

Mohammed Rais Moin Qureshi ...Petitioner
vs.
Deputy Commissioner of Police
Zone 1, Mumbai & Ors. ...Respondents.

Mr.Kuldeep S. Patil for the Applicant
Mr.R.Y.Mirza,A.P.P. for State

**WITH**
**CRIMINAL WRIT PETITION NO.1351 OF 2005**

Purkhan Moin Qureshi ...Petitioner
vs.
Deputy Commissioner of Police
Zone1, Mumbai & Ors. ...Respondents

Mr.Kuldeep S. Patil for the Applicant
Ms S.D.Shinde,A.P.P. for State

**CORAM: A.S.OKA,J.**
**DATE : JUNE 27,2005.**

**P.C.:**

1. Rule. Learned A.P.P. waives service. Considering the facts and circumstances of the case taken up for hearing forthwith.

2. The facts of both the Petitions are more or less identical. Hence both the Petitions are disposed of by a common order.

3. For the sake of convenience reference is made to the facts in Criminal Writ Petition No.1350 of 2005. An order of externment was passed against the Petitioner under Section 60 of Bombay Police Act, 1951. A statutory appeal was preferred by the Petitioner against the said order. The statutory Appeal was decided by the Appellate Authority by order dated

10th March 2005. The Appellate Authority held that the order of externment was bad in law. The Authority also found that the order of externment was excessive and there was non-application of mind by the Competent Authority.

4. However, in the operative part of the order, the Appellate Authority stated that the Appeal was partly allowed and there was an order of remand. The Appellate Authority issued order of remand with direction to remove the defects in the proceedings from the stage of show cause notice and to issue fresh order.

5. The learned Counsel for the Petitioner in both these Petitions stated that once the order of externment is held to be bad in law there was no occasion for the Appellate Authority to pass order of remand. He submitted that when the order of remand directs the concerned Authority to initiate fresh proceedings for externment and to pass a fresh order. He submitted that Appellate Authority has no jurisdiction to pass the said order. The learned A.P.P. for the Respondents has supported the impugned Judgments and Orders.

6. I have considered the submissions. It cannot be laid down as an absolute proposition of law that while deciding the appeal preferred against the order of externment,the Appellate authority cannot pass an order of remand. However, in the present case, the Appellate Authority has recorded a categorical finding that the order of externment was passed in respect of an area which was not referred to in the show cause notice. The Appellate Authority found that as a result of

inclusion of the said area in the order of externment, the said order was excessive. The further finding recorded is that there was non application of mind on the part of the concerned Officer who has passed order of externment.

7. When the finding was recorded that the order was illegal there was no occasion for remitting back the matter to the concerned Officer. The said order of remand in my view is erroneous and contrary to law. The Appellate Authority ought to have quashed the order of externment and there was no occasion to pass the order of remand.

8. Hence I pass the following order :

i) Impugned orders passed by the Appellate Authority are modified. The direction given by the Appellate Authority to remand the matter to the Competent Authority is set aside and it is clarified that the Appeals preferred by the Petitioners stand allowed by setting aside the orders of externment passed against the Petitioners.

ii) It is clarified that notwithstanding setting aside the said orders of externment, it is always open for the Respondents initiate appropriate proceedings against the Petitioner in accordance with law.

iii) Rule is made absolute in above terms.

**JUDGE**